IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 333 OF 2003

Rehman Pirmohammed Shaikh & Ors..... . ....
Appellants. V/s
(Orig.Accd.Nos.1 to 3)
The State of Maharashtra ....
Respondents.

Mr.D.G.Khamkar, Adv. for the appellants.

Mr.P.S.Hingorani, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

15th December, 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.76 of 2002 on 13.01.2003 the appellants-accused have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case as disclosed by reappreciation of evidence

stated briefly is that the accused No.1-Rehman was married to Yasmin the victim and accused Nos.2 and 3 were in-laws of the victim. Right from the inception of the marriage Yasmin was ill treated by in-laws and the husband because she did not conceive immediately after marriage. However the matter was later on reconciled and she cam back to stay at marital home. While so staying on 8.7.2001 at about 10.00 a.m. The accused gave abuses and assaulted the victim asking her to get out from the house and looking to her resistance the accused persons poured kerosene on her and put her on fire as a result of which she was extensively burnt, admitted to hospital where her dying declaration was recorded on the basis of which First Information Report was registered and investigation was completed. The accused persons were arrested and prosecuted for having committed murder of the victim Yasmin.

4. The prosecution examined nine witnesses to prove its case and the learned trial Judge on appreciation of this evidence came to the conclusion of guilt and convicted all the three accused present appellants under section 302 read with section 34 of Indian Penal Code. In this case the basic evidence is in the shape of dying declarations recorded by the Special Executive Magistrate and the police. The Special Executive Magistrate has been examined by the prosecution and he has deposed that he recorded the dying declaration

of Yasmin the victim after he was summoned to do so. The statement is recorded in question and answer form and it bears certificate of the doctor stating that the patient was conscious and was in position to give statement. In this dying declaration Exhibit 24 the victim has very clearly stated how she came to be burnt. She has impleaded each of the accused persons and has given cogent reasons why she was being tortured. The dying declaration bears endorsement of the Special Executive Magistrate who recorded it and at the end of the declaration there is an endorsement by the doctor that the patient was conscious and oriented in position to give statement. He has certified that the statement ended in his presence and nobody else was present at the site. The doctor also has been examined by the prosecution and he has proved the endorsements made by him. We thus have a dying declaration duly certified by the doctors as being one recorded during the conscious expression by the victim. It bears certificate of the doctor at the beginning and at the end. All legal requirements of a valid dying declaration exist in the document Exh.24. In this document the victim has very clearly stated how she was burnt and what was the role played by each of the accused.

5. One aspect has been noted that in this dying declaration she has said that she was crying very loudly and was requesting the accused persons not to burn her as she was carrying a child in her womb. But

her shouts fell on deaf ears and she was dead.

6. We also have on record another dying declaration recorded by the police which is at Ex.28. In this statement also she has narrated the same thing. She has attributed specific role to each of the accused and she has stated that she pleaded before the accused not to burn her as she was pregnant.

7. Her post mortem has been conducted. These two dying declarations therefore have been recorded by the police and by the Special Executive Magistrate. Because the police had recorded the dying declaration and there was no endorsement on the same it was treated as statement made by her. This Ex.28 contains that statement was recorded in Marathi and was explained to her in Hindi and she admits that it was true according to her knowledge. It was after recording of this statement that the Special Executive Magistrate was called. It is pertinent to note that Special Executive Magistrate has recorded the statement in Hindi. It bears certificate of the doctor. The certificates very clearly state that the patient was in condition to make statement, she was conscious mentally and physically and therefore capable of giving statement. These two dying declarations intrinsically corroborate each other. Exh.28 as mentioned that it was recorded in Marathi and explained to the victim in Hindi. She admits it to be correct. Exh.24 is recorded in Hindi and it bears certificate of the

doctor and is the same as Ex.28 on all material particulars.

8. The learned trial Judge accepted this dying declaration and convicted the accused as aforesaid. The learned Judge has marshalled the evidence on record and has given his findings on all material issues and we are in full agreement with the findings recorded by him. It is a settled principle of law that a lawfully recorded and admitted dying declaration can be the sole basis for conviction. Here we have intrinsic documentary evidence which fully corroborates with the dying declaration in shape of statement recorded by the police Ex.28. In our opinion, no further corroboration is necessary for sustaining the conviction. The learned trial Judge has considered other corroborative material on record and arrived at the findings which we hereby endorse. In our opinion, no further discussion in the circumstances of the remaining evidence is necessary. The appeal consequently fails and is accordingly dismissed.